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September 5, 2002

JEFFERY A. HANDELMAN

Name of Applicant, Assignee or
Registered Representative

Jeffery A. Handelman

Signature

September 5, 2002

Date of Signature

09-09-2002
U.S. Patent & TMOtc/TM Mail Rcpt Dt. #70

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

JACOB ZIMMERMAN,

Petitioner,

v.

NATIONAL ASSOCIATION OF
REALTORS,

Registrant.

Cancellation No. 40,141

TRADEMARK TRIAL AND
APPEAL BOARD
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RESPONDENT'S ANSWER TO PETITION TO CANCEL

Registrant, National Association of Realtors ("Registrant" or "NAR"), answers as follows to the Petition To Cancel in the above proceeding. For the Board's convenience, the allegations of the petition are repeated below and then followed by NAR's response.

1. Petitioner Jacob Zimmerman is an individual doing business under the fictitious business name BuildIdeas.com, located at 208 Dryden Road, No. 507, Ithaca, New York 14850.

ANSWER TO PARAGRAPH NO. 1

NAR is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1, and therefore denies those allegations.

2. Registrant National Association of Realtors (NAR) is an Illinois corporation with principal place of business at 430 North Michigan Avenue. Chicago, Illinois 60611-4087. It owns the collective membership mark "realtor" No. 519,789 issued January 10, 1950 to the National Association of Real Estate Boards. The latter organization changed its name to the National Association of Realtors and the mark ownership renewed each decade.

ANSWER TO PARAGRAPH NO. 2

NAR admits that it is an Illinois corporation with a principal place of business at 430 North Michigan Ave., Chicago, Illinois 60611-4087. NAR admits that it owns the collective membership mark REALTOR®, Registration No. 519,789, issued on January 10, 1950, to the National Association of Real Estate Boards. NAR admits that the latter organization changed its name to the National Association of Realtors, and the registration of the mark was renewed to NAR in 1989.

3. Petitioner has and will continue to be damaged by the above-identified registration and hereby petitions to cancel the same.

ANSWER TO PARAGRAPH NO. 3

NAR denies that petitioner "has and will continue to be damaged by the above-identified registration." NAR admits that petitioner is seeking to cancel the registration, but denies that the petition has merit.

4. The subject mark "realtor" is generic. In common usage, it means real estate agent, a phrase synonymous with realty agent.

ANSWER TO PARAGRAPH NO. 4

NAR denies the allegations of Paragraph 4.

5. The members of NAR are realty agents. NAR allows only those members to use the word "realtor" in connection with their businesses. NAR advises its members and all others that the use of the word "realtor" in connection with a web site name is contrary to the rules of NAR. NAR also advises members and nonmembers that it will take legal action against any person using the word "realtor" in a web site name.

ANSWER TO PARAGRAPH NO. 5

NAR admits that the membership of NAR is comprised primarily of persons licensed by individual states to act either as real estate brokers or real estate sales people. These real estate professionals as members of NAR are authorized to use the REALTOR® mark in accordance with specified terms and conditions. NAR admits that use of the REALTOR® mark by members of NAR in domain names is subject to specified rules prescribed by NAR, but is not permitted by others, and that it has advised those who use the mark in domain names except as NAR permits that they may be subject to legal action. NAR denies all other allegations of this paragraph 5.

6. Petitioner is not a member of NAR, and has never been a member of NAR. He is not a real estate broker. Petitioner is in the business of buying and selling website addresses containing the word "realtor", such as, batonrouge-realtor.net, Anaheim-realtors.net, abolineraltors.com, siliconvalley-realtor.net. His business also includes providing services in connection with such web site addresses. For instance, petitioner has attempted to develop such sites as bostonrealtors.org as a location offering a selection of real estate agents in the Boston area who would pay petitioner to promote their services in the Boston area.

ANSWER TO PARAGRAPH NO. 6

To the best of NAR's knowledge petitioner is not and never has been a member of NAR. NAR is without knowledge or information sufficient to form a belief as to the truth of the other allegations of Paragraph 6, and therefore denies those allegations.

7. Petitioner owns approximately 1,900 web site names incorporating the term "realtor" and a geographic designation.

ANSWER TO PARAGRAPH NO. 7

NAR is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7, and therefore denies those allegations.

8. Petitioner is not permitted by NAR to use the work "realtor" in his web site names because he is not a member of NAR, and because NAR forbids the use of the word "realtor" in web site names.

ANSWER TO PARAGRAPH NO. 8

NAR admits that petitioner is not authorized by NAR to use the REALTOR® mark.

9. Petitioner has been injured in his business by the continuance of the registration of the "realtor" mark. Potential purchasers of petitioner's web site are mainly real estate agents. Many such realtor agents are aware of NAR's threats to file suit against any person using the term "realtor" in web site names, and are therefore unwilling to purchase any of petitioner's web site names. In addition, realty agents are unwilling to pay petitioner for placement on such web sites as bostonrealtors.org because of the threat by NAR to enjoin the use of such web site names. NAR's continuing registration of the "realtor" mark has severely lowered the demand for petitioner's web site names and petitioner's promotional services.

ANSWER TO PARAGRAPH NO. 9

NAR denies that petitioner has been injured in his business by the continuance of the registration of the REALTOR® mark. NAR admits that potential purchasers of petitioner's web site are mainly real estate agents. NAR is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 9, and therefore denies those allegations.

10. Petitioner is simultaneously filing a petition to cancel the collective membership mark "realtors", also owned by NAR.

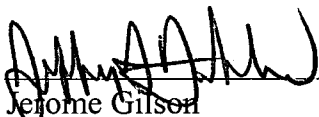
ANSWER TO PARAGRAPH NO. 10

NAR admits that the collective membership mark REALTORS® is also owned by NAR and that petitioner has filed a petition to cancel the registration of that mark in a cancellation proceeding that has been consolidated with this one.

WHEREFORE, NAR respectfully requests that this cancellation petition be dismissed with prejudice.

Respectfully submitted,

NATIONAL ASSOCIATION OF REALTORS

By: 
Jerome Gilson
Jeffery A. Handelman
Nicholas G. de le Torre
BRINKS HOFER GILSON & LIONE
P.O. Box 10395
Chicago, Illinois 60610
(312) 321-4200

Attorneys for Registrant.

Dated: September 5, 2002

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Respondent's Answer to Petition to Cancel was served on counsel for Petitioner by Federal Express delivery, on this 5th day of September, 2002, in an envelope addressed as follows:

David Barry
BARRY & ASSOCIATES
580 California Street, 5th Floor
San Francisco, CA 94104

